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Good day everybody, and greetings from the UN in Geneva. I am happy to present today this study that I've been doing, with a lot of help, along the past years.

The study finds that there may be a way for a country to regulate non-medical cannabis, and potentially the non-medical use of other drugs as well. But I have been focusing on cannabis in this particular study; cannabis has a special legal regime in the Single Convention, and that deserves a specific attention. I believe most drugs would deserve this specific enquiry, specific attention given to their particular treaty history and the specific legal framework that might apply to their non-medical use. And in particular, because it relates to the possibility, the ability, the existence of ways to actually reduce the harms from the substances that we want to regulate for non-medical use.

So, I'm going to try to present this briefly; I invite you to read the study –it's quite long and dense, it's international law so it's always a bit complex, but I've tried to make the study as comprehensive as possible. It is a textual interpretation, so it's based fully on the interpretation of the binding provisions within the Single Convention and other relevant treaties. But then it goes to look for support to look for confirmation or refutation in subsidiary means of interpretation as can be other other treaties related concluded by some or part of the parties, the commentary for instance, and obviously the work that led to the Convention, such as the the work of the plenipotentiaries and all the drafting history of the treaty provisions at stake.

So article 4 on general obligations: as the board mentioned in its 2018 brief on the bill c-45 of Canada legalising non-medical cannabis –and i do agree indeed– the way bill C-45 has been crafted to legalise cannabis for non-medical and non-scientific purposes this way cannot be reconciled with the obligations of Canada under article 4 (c) of the Single Convention. And indeed, as INCB mentioned in that same brief, article 4 (c) has this wording (seen on screen).

However, I suggest that we have not always given the the proper attention to the entirety of the general obligation contained in article 4 because, as we can see here, the INCB put emphasis on the fact that states have to limit exclusively to medical and scientific purposes a series of activities related to drugs... but this is subject to the provisions of the Single Convention.

So the limitation –the exclusive limitation– is subject to the provision of the Convention. These provisions can be found in the text, but sometimes, the Commentary is just making things easier: indeed, these provisions to which this paragraph is subject are three Articles which all apply to "other than medical and scientific uses". It's article 49 and article 2

paragraph 9 for what concerns cannabis, then we have article 27 for the coca-leaf (but we're not considering it today). These all concern "other than medical and scientific uses" including for coca-leaf which is actually for use as a flavouring agent (which is a non-medical use, flavour in beverages).

So, with regards to the "limitation", what we have to understand is that the general obligation is not to limit exclusively, but to limit exclusively subject to some exemptions. And this is why, in the preamble, we don't find this "exclusive" limitation, but just a limitation. The goal is to limit, not exclusively; and limit in a way that is generally acceptable. I think it is absolutely fundamental to see this distinction between the exclusive limitations balanced by the exemption and the generally acceptable limitations that it echoes in the preamble.

In addition to this, we don't find any clear textual obligation to prohibit in the Convention. We just have recommendations or options to prohibit substances in schedule IV, if certain conditions are given, but never will we find any obligation to prohibit. So that's also an element to consider: it's just simply not there in the treaty, and if it's not there, it cannot bind us. And the object and purpose of the treaty, as the INCB recognises itself, is the protection of the "health and welfare of [hu]mankind" and, to reach that goal, the treaty and the Parties proposes themselves to establish a series of control measures, in order to reach that goal of protecting health and welfare. So the interpretation of the treaty has to be guided by this goal, and it has always been. Even countries that say, for instance, for substances in schedule IV, "we will apply prohibition", they do so because they believe, in good faith, that applying prohibition will contribute to improving and protecting the health and welfare of humankind.

That is, I think, something we can agree on. Even if we don't agree with the fact that it will work, but we can agree that it's done in good faith with a view of reaching the goals of the treaty: protecting health and welfare.

So abuse, ill effects, addiction, misuse... we have a series of words that are analysed in the report i am presenting, High Compliance, pages 66-73.

We have to note changes between the original Single Convention, and the amended Single Convention. Initially, we had the word "addiction" present a lot. In High Compliance, there is also an annex that lists every single mention of the word "abuse" and related terms, and explains their context; what we find is that, not only because abuse is here to replace addiction with the 1972 amendment, but also with the context in which it is presented, "abuse" is a medical condition. It's a disease. It's certainly not equivalent to all uses or to all non-medical uses. "Abuse", in the way that it is defined (in the Convention), but also in the way that it was defined at the time by medical literature and doctors, it has evolved and nowadays in the international nomenclature of diseases, where we used to find "abuse" we now find "substance use disorders".

And, in the 1961 Convention, when we try to understand what abuse could mean just by reading the text, we see that it's always related to "ill effects", to conditions, to the question of treatment and prevention –what do we treat and prevent? diseases.

So, in order to protect the health and welfare of humankind, Parties have to avoid abuse, to avoid substance use disorder, and other related harms. And that makes sense.

Quickly because I'm short on time, this is the way I tried to represent graphically what the Convention establishes. So, this closed-loop, the limitation, that we can see here in red, the list it uses for licit medical uses are these ones in blue. The licit non-medical uses (in green) are the ones that are exempt under one of the three articles to which Article 4(c) is subject to: Articles 2(9), 27, and 49. And finally, what is neither medical and scientific, nor non-medical as exempt under the relevant provision, that is the remaining uses that are illicit. But not all non-medical uses are illicit. This coheres obviously with the object and purpose.

Article 2(9) is the current article that I identified (not alone obviously, others also have) identified this article as the one that provides a legal framework for non-medical cannabis in our current context, in 2022. Countries, as you see here, are "not required to apply the provision of this convention to drugs commonly used in industry for other than medical and scientific purposes" as long as they enter either by "denaturing or other means" that the drugs cannot be liable to substance use disorder, to abuse.

We also have in this provision this mention that the harmful substances cannot be in practice recovered. Some people have said that this, somehow, forces into denaturing the substance: because denaturing and "making the harmful substance not be recovered" is somehow the same thing –or we can at least understand it as the same thing. But, it is not possible to have the same thing because, if Parties are given the choice of denaturing or something else, then they cannot subsequently be forced into denaturing elsewhere: that opposes the principle of "effet utile" or principle "ut res magis valeat quam pereat" which says that we cannot interpret a treaty provision in a way that it would render parts of its word, or part of the provision, useless or void of any legal effect.

So, if we consider that the substance has to not in practice be recovered, meaning we have to remove the active compound or put other other ingredients that would avoid the compound to be used in the end: it's denaturing. And then the words "or by other means" are void of any effect, and that's not possible: these words have been inserted here on purpose, and they must have effects. So countries must be enabled to "not apply the provision of the convention" by applying other means than denaturing these drugs.

And this is in order to reduce abuse, ill effects, and harmful substances: the only thing that makes sense and that does not render any part of the provision void is by considering that "harmful substances" is harms, the harmful "essence" or "substance" of the of the drugs, the harmfulness of it.

In addition, if we try to interpret and again that's based on the principle of "effet utile" (ut res magis valeat quam pereat) if we try to interpret that THC is the harmful substance in cannabis that should not be recovered: first, it's not that evident to think that it's "easy" to recover pure THC from cannabis. It's not easy; that's why we have some problems sometimes when people try to do it at home and they have accidents, because it is precisely not easy. Second, even if we try to consider that it's easy anyway, if THC is the harmful substance, so it is the active ingredient of cannabis that must be removed: for the substance to be exempt the provision has to work for all drugs. So, what would it be for morphine, when it's a single compound drug: do we have to remove morphine from morphine in order for it to be exempt? That makes no sense so if it cannot make sense for morphine it cannot make sense for cannabis. That's again against the principle of effectiveness (effet utile / ut res magis valeat quam pereat) since it would render the article 2(9) void in the case of morphine and not in the case of cannabis.

In addition we know that morphine has been given as an example of these drugs that can be exempted for processes of photography, which personally i would refer to as a recreational purpose. The morphine exempted for photography was not denatured, it was morphine, because if it was not, it would not have been useful in these processes of photography.

Again, article 2(9) allows, according to the true general rule of interpretation that is the "effet utile" (ut res magis valeat quam pereat) allows to consider that either denaturing or other means are possible to exempt drugs, as long as the goal of reducing abuse in order to contribute to the ultimate object of protecting the health and welfare, as long as this is met.

Also, on Article 2 paragraph 9, it's important to consider the inter-temporal aspect of this article. As the drafters explain –we can see it in the treaty but it's very clear in the official records and also in the commentary– article 2(9) was thought for the future and made as something for a future condition which might never arise; which might or might not arise. And these are elements of inter-temporality (inter temporal law).

Other elements of inter-temporality are the fact that the drafters did clearly balance: either we will include a flexible amendment procedure, or if we don't, then we will include article 2 paragraph 9. It was one or the other. And the drafters decided NOT to include the flexible amendment procedure and therefore they decided to include article 2 paragraph 9.

So these two provisions had the same weight in terms of both being thought for the future (we don't adopt a treaty to amend it the next year: the amendment is there for the future when there are developments that we we cannot anticipate) and it's the same thing for article 2(9), that's called intertemporality.

And in addition, if they were not sure of including it and preferred at some point the amendment (until they ultimately chose article 2 paragraph 9) it's also because the language was vague: the "harmful substances", the "commonly used in industry" all of this is not defined in the treaty it's very vague. It could be interpreted in fairly different manners, including in a manner that allows the legalisation of cannabis; and even though the drafter might not have been just aware of just that as such, they were clearly aware that the drafting could have been improved. That is France saying it at the almost last meeting during the negotiations, but at the beginning of the negotiations, the USSR also mentioned that the language could be improved and that "others and medical and scientific use" was very broad and industry as well. They knew that. They still decided to include it.

The inter-temporality allows us to look at the article 2(9) with the terms of today instead of the terms of 1961, that's quite interesting because, obviously the cannabis industry, a term well-used today, echoes the common use in industry. And obviously we also mention a lot the "non-medical use of cannabis" as the standard term to refer to recreational use so that echoes the known medical uses in the Convention.

But also, the intertemporality allows to reconcile the provision of exemption for non-medical use under Article 2(9) with the provision of exemption for non-medical use in Article 49.

At first sight, it looks like they are exempting the same thing, and therefore conflict. But this is erroneous: they do not conflict, because they have different temporal applications.

Not only do they have different temporary applications, but they also refer to different subtypes of "other than medical and scientific uses". The non-medical uses that were exempt under article 49 were those uses that were traditional in the territories and that were permitted as of 1st January 1961. That's not the case of the uses under article 2 paragraph 9, these are only "common in industry". So that's the difference in terms of subtypes of uses. And Article 49 was made to expire after a certain period (there is some debate as to whether the period of expiration is that of the 61 convention or of the 61 convention as amended in 1972: the date would change, but anyway in both cases it's passed already). So, article 49 has expired, it is not applicable anymore; but then we have this inter-temporal article 2(9) which was thought to maybe apply in a future that we don't know of: and that's precisely why it is complementary with article 49 once it has stopped to apply, once we have discontinued these uses that were traditional before first January 1961, then we can authorise "new" uses, the ones that are common in industry.

Obviously, we can discuss the content of willing to discontinue traditional uses, and allow only those that would be industrial. That's obviously ethically questionable. Yet, it is still allowing uses for non-medical purposes, legally, after article 49 expired.

And so, as of today, or as of at least if we consider that cannabis is common in industry, and that recreational use is non-medical use, therefore: if the country frames its legislation in the

way that it complies with both sub-paragraph (a) reducing substance use disorder and other other harms, and sub-paragraph (b) submitting statistical information to the INCB; if the country complies with both, then the uses that are so exempted would be licit under the Convention, and obviously they will be undertaken under legal authority.

So, in article 33 for instance, we see the possession of drug is not permitted except under legal authority. And article 2 progress 9 provides that legal authority.

If we jump to the 1988 Convention against trafficking, it's the same thing. The 1988 Convention never calls against cannabis generally, but against these activities that are already illicit under the 1961 Convention, or contrary to the 1961 convention. We can see this here in Article 3 (on screen), but it's all along the 1988 convention: we see it again in article 14. It's another example, here the 1988 convention calls to eradicate "illicit" cultivation of cannabis and narcotic plants, not the mere cultivation. And it is better that way, because calling to eradicate any cultivation of cannabis would clearly go against the 1961 convention, which provides for its cultivation for not only medical and scientific purposes but also industrial and horticultural purposes.

The 1971 convention, I have to mention it but it's clearly explained in footnote 105 in the High Compliance report. The footnotes in this report are crafted to serve as a toolkit and to provide supporting information. So this footnote explains why the 1971 convention is not relevant, except if we talk about pure THC molecules. It is true that, in High Compliance, I'm not talking about pure THC: I'm talking about the cannabis that people use for recreational purposes, which is rarely pure THC; it's rather right cannabis or cannabis resin. So i don't really address it, but the 1971 convention would apply only in the case of that achieving pure isolated compound as long as the THC is part of the cannabis plant, the cannabis, the cannabis resin, or part of the extract and tincture of cannabis: the 1971 convention has no effect and does not apply.

That's something that is obviously recognised by the INCB itself, in particular in his 2014 contribution to the high level review of the 2009 "Political declaration and plan of action" and a number of other other sources.

So, in conclusion, reconnecting with what at was saying at the beginning, Canada has legalised cannabis and said: "I am in non-compliance with the 1961 convention"

It is true. But, if they were to embed into their legislation: harm reduction, strong measures aimed at effectively preventing the harms and likelihood of abuse from cannabis in their legislation, and obviously in policy, and be able in good faith to prove that they are doing so, and if they were reporting to the INCB according to article 2 paragraph 9 sub paragraph b, they would likely be in compliance with article 2(9) and, by doing so, they might be in compliance with article 4(c).

But obviously, if foreseen differently. As foreseen currently, they are not.

And that's what is interesting: how should countries consider these international dispositions when they are crafting their law nationally, and what kind of good faith commitment should they share with the international community in order to convince that they are still willing to contribute to these goals of protecting the health and welfare of humankind, albeit maybe differently than other countries: by regulating particular use but still they are contributing to this this goal.

To finish, bill C-45 of Canada could also have been foreseen differently in order to fit with the overarching goals of the international community. Beyond the pure international law and drug control, there are also other obligations that relate to the question of for instance biodiversity or human rights or other environmental concerns.

And obviously, in many legally regulated cannabis markets, the lack of inclusion into the licit market of the people that have been involved in illicit market (to my opinion and to the opinion of the number of persons interested in the topic) prevents a smooth and a comprehensive move towards a licit and regulated system, and continues to maintain part of the illicit markets subsisting.

So, comprehensive social approaches that consider the inclusion and the incorporation of these stakeholders in the licit market, are absolutely essential.

Obviously, it's not covered by the 61 convention as such, but these are still elements that I thought should be considered in the discussion today: questions of environment, social justice, biodiversity, and generally a sustainable development-oriented approach.

I thank you for your attention.